

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

ROBERT EARL GAYNOR, #1163755

Petitioner,

v.

CIVIL ACTION NO. 2:17cv535

HAROLD W. CLARKE, Director,  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on April 14, 2016, in the Norfolk Circuit Court for grand larceny related to his theft of a cellphone. As a result of the convictions Petitioner states he was sentenced to serve 10 years in prison with eight years suspended, leaving an active total time to serve of two years.

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed March 19, 2018, recommends dismissal of the petition, as Gaynor had not plausibly alleged that the state court's merits determination was unreasonable or contrary to federal law. The Report and


Recommendation advised Petitioner of his right to object and the time limit for doing so. The court has received no objections, and the time for filing objections has now expired.

Accordingly, the court does hereby accept the findings and recommendations set forth in the Report and Recommendation filed March 19, 2018, and it is therefore ORDERED that respondent's Motion to Dismiss be GRANTED, and that the petition be DENIED and DISMISSED with prejudice.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk is directed to mail a copy of this Final Order to Petitioner and provide an electronic copy of the Final Order to counsel of record for Respondent.

  
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MARK S. DAVIS  
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

April 20, 2018